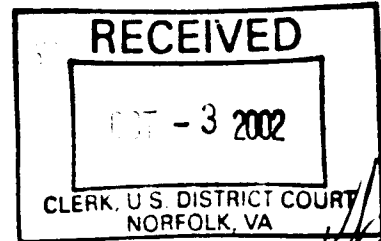


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



Yaser Esam Hamdi
Petitioner

v.

Donald Rumsfeld
Respondent
and
Friends of Immigration Law Enforcement
Defendant-intervenor

Civil Action No. 2:02CV439
Hon. Robert G. Doumar
U.S. District Court

RESPONSE TO RESPONDENTS' OPPOSITION TO MOTION TO INTERVENE

In its opposition to FILE's motion to intervene, the government claims that determining the citizenship of Yaser Esam Hamdi is not germane to the case at hand—that the legal issues at stake can be resolved without such determination.

However, by the government's actions, i.e., moving Hamdi from Guantanamo Bay to Norfolk, the government has shown that it has already determined that Hamdi is a U.S. citizen. Such determination was in error, which error has triggered the habeas action before the court. In other words, the mistaken determination by the government that Hamdi is a U.S. citizen is a prior issue of fact central to the case. If the government's determination was indeed in error, and can be shown to be such, Hamdi will be returned to Guantanamo, and the present case will be moot.

The Hamdi case, which will likely have important and far-reaching impact, should not be decided—in fact, cannot be legitimately resolved—without first addressing whether the very premise on which the case stands is correct.

As we have shown in our motion, the 14th Amendment does not grant, and was never intended to grant, birthright citizenship to persons born in Hamdi's circumstances. Furthermore, since no court has ever addressed the citizenship status of a child born in the United States to foreign nationals in the country on temporary work visas, the Hamdi case is a case of first impression. Thus the arguments by petitioner and respondent over Hamdi's habeas rights as a U.S. citizen are without practical significance.

FILE's interest in the Hamdi case is concrete and appropriate. As an organization dedicated to the proper enforcement of immigration law, FILE has associational standing to contest the

improper granting of birthright citizenship to the children of aliens, as in the case of Yaser Hamdi.

FILE has raised serious and legitimate legal questions, and our motion to intervene is the best, perhaps only, vehicle by which these questions and the central issue of Hamdi's citizenship will be addressed. For this reason, and for the sake of clarity and prudence, the court can and should grant our motion to intervene.

Wherefore, the Friends of Immigration Law Enforcement continues to request that this Court allow it to intervene.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Craig Nelsen', written over a horizontal line.

Craig Nelsen
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Certificate of Service

I hereby certify that a copy of this motion to intervene has been mailed by U.S. mail, first class, on this 30th day of September 2002, to:

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